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No. 79-1018

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

WILLIAM L. DELAY,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For a Writ of Certiorari to the Appellate Court of Illinois, Fourth Judicial District

BRIEF FOR RESPONDENTS IN OPPOSITION

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JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. However, as treated more fully in the argument contained herein, respondent does not believe that petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant his Petition for Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

Whether Due Process requires proof of criminal intent to sustain petitioner's conviction for using a false name on title documents in violation of the Illinois Vehicle Code.

STATEMENT OF THE CASE

Respondent wishes to supplement petitioner's Statement of the Case with the following facts:

A power of attorney is required in order to permit a transfer of title by the transferee without the transferor's signature (R. 15, 16).[1] No power of attorney was ever given or mentioned to Shirley Caldwell during the transaction with petitioner (R. 48-50). The parties stipulated that Joan Dags was an agent of Motors Insurance Company who had authority to sign title transfers. Ms. Dags did not sign any of the exhibits admitted into evidence nor did she give petitioner permission to sign her name (R. 57).

Although petitioner testified that he had obtained a power of attorney from John Bishop, he admitted that Bishop did not hold any certificate showing that title had been transferred to Bishop by the insurance company (R. 84). Petitioner did not call the police nor did he ever talk to anyone at Motors Insurance Company (R. 93).

Shirley Caldwell testified that she never told petitioner to sign the name of any other person on the salvage certificate application (R. 54). Petitioner denied that he had been told to sign any specific name to the application (R. 94, 95).

Petitioner was convicted of theft in 1975 (R. 69, 70).

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[1] All transcript references are to the Report of Proceedings of July 18, 1978.

REASONS FOR DENIAL OF THE WRIT

DUE PROCESS DOES NOT REQUIRE PROOF OF CRIMINAL INTENT TO SUSTAIN PETITIONER'S CONVICTION FOR USING A FALSE NAME ON TITLE DOCUMENTS IN VIOLATION OF THE ILLINOIS VEHICLE CODE.

Petitioner argues that under the principles set forth in *Morissette* v. *United States,* 342 U.S. 246 (1952), a provision of the Illinois Vehicle Code, Ill. Rev. Stat. 1977, ch. 95½, § 4-105(e), is constitutionally infirm because it imposes strict liability on an individual who uses a false name on an application for certificate of salvage. *Morissette,* however, involved construction of a non-regulatory federal statute defining a crime of common law origin and certainly did not purport to present constitutional parameters limiting the State's power to legislate strict liability offenses. In fact, *Morissette* supports respondent's contention that the statute at issue here does not offend Due Process.

In *Morissette,* this Court construed a federal statute to reflect a requirement of scienter. Central to this holding was the determination that the Court should not, in the face of Congressional silence, extend strict liability to a crime derived from common law which had, historically, required proof of a mental element. 342 U.S. at 267. Reaffirming prior decisions rejecting a mens rea requirement with respect to certain types of offenses, this Court expressly distinguished the crime involved therein from those proscribed by regulatory public welfare statutes. 342 U.S. at 252, 253. Violations of these regulations may

> result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. . . . The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities.

342 U.S. at 256. Such is the type of statute presently attacked by petitioner. Further, unlike the crime dealt with in *Morissette,* the offense at issue here cannot fairly be said to have originated in the common law.

Ill. Rev. Stat. 1977, ch. 95½, § 4-105(e) is part of a comprehensive scheme of regulation of motor vehicles designed to ensure the accuracy of documents of title. The scheme, as it relates to petitioner, may be described as follows: When a vehicle has been transferred to an insurance company through payment of damages, the vehicle is deemed to be in salvage. The certificate of title and an application for certificate of salvage must be submitted to the Secretary of State before a certificate of salvage will be issued in the name of the owner. Ill. Rev. Stat. 1977, ch. 95½, § 3-117(b). If the owner wishes to take the vehicle out of salvage, he must surrender his certificate of salvage along with the new application for title. Ill. Rev. Stat. 1977, ch. 95½, § 3-104(e).[2] In this manner, multiple ownership documents are not outstanding.

Clearly, to ensure proper transfer of vehicle ownership and the ability to trace such ownership, the information provided on each and every document must be accurate.[3] Section 4-105(e), prohibiting the use of a false name, is essential to the scheme.

[2] Thus, when petitioner sought to obtain a certificate of title on the insurance company's car, to which he in fact held no salvage certificate, he was first required to apply for a duplicate salvage certificate, surrender it, and then apply for a certificate of title.

[3] Petitioner's contention, that it did not matter what name he signed to the salvage certificate application, is incorrect. First, had he signed his own name rather than "Motor Ins. Co. by J. Dags," Ms. Caldwell's assumption that he was an agent of the insurance company would not have been reasonable and she would have been more cautious to inquire as to the existence of any power of attorney. Second, with respect to tracing the ownership of the vehicle, the records incorrectly reflected that "Motor Ins. Co. by J. Dags" applied for a salvage certificate on November 23, 1977.

Although a reasonable construction of the statute would not, as petitioner suggests, prevent an agent from signing another's name, it does at the very least require that the agent be authorized to do so.

The Illinois Vehicle Code, just as the regulatory statutes referred to in *Morissette,* is designed to minimize the possibilities of improper vehicle transfers and to place a reasonable burden on persons who have assumed certain responsibilities in relation to the public.[4] *Compare United States* v. *Balint,* 258 U.S. 250, 254 (1922); *United States* v. *Dotterweich,* 320 U.S. 277, 280, 281 (1943). Without a reliable system reflecting true vehicle ownership, they could be readily stolen and sold with buyers purchasing at their financial peril. Moreover, unlike the ordinance struck down in *Lambert* v. *California,* 355 U.S. 255 (1957), the statute prohibits an affirmative act under circumstances which should alert the doer to the consequences of his deed. *See United States* v. *Freed,* 401 U.S. 601, 608 (1971).

The nature of Section 4-105(e) further belies any suggestion that it is of common law origin. That the section falls within an article entitled "Anti-Theft Laws" does not make it analogous to the larceny-type offense at issue in *Morissette.* Rather, the classification itself indicates that the statute is preventative and not punitive—a type rarely encountered at common law. *See United States* v. *Balint,* 258 U.S. 250, 251, 252 (1922). In any event, the common law origin of the offense involved in *Morissette* would appear to be significant only as an interpretive device:

[4] It should be noted that petitioner was a dealer able to engage in certain activities only because of his licensed status. *See, e.g.,* Ill. Rev. Stat. 1977, ch. 95½, § 3-118(b). Further, it is reasonable to require that *any* person who signs a name other than his own on documents relating to title take the risk that his signature is not authorized. Petitioner, in fact, clearly had knowledge that he was not authorized to act for the insurance company and, as applied to him, the statute is unquestionably sound.

> The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute. And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

342 U.S. at 263.

One final aspect of the Illinois statute warrants discussion. Its violation resulted in a felony conviction carrying a two year sentence.

In its perusal of strict liability crimes, the Court in *Morissette* observed that typically public welfare offenses result in relatively small penalties and no grave damage to an offender's reputation. 342 U.S. at 246. Although the Court was wholly silent as to any constitutional limitations on the State's power to enact statutes requiring no mens rea, the decision was read to have constitutional overtones in *Holdridge* v. *United States,* 282 F. 2d 302, 310 (8th Cir. 1960). Even *Holdridge,* however, did not present these criteria as touchstones of constitutionality. *United States* v. *Ayo-Gonzales,* 536 F.2d 652, 658 (5th Cir. 1976), *cert den.* 429 U.S. 1072 (1977). Moreover, this Court has construed strict liability statutes resulting in more onerous consequences than those found herein. *E.g., United States* v. *Freed,* 401 U.S. 601 (1971) (ten years); *Williams* v. *North Carolina,* 352 U.S. 226 (1945) (ten years); *United States* v. *Balint,* 258 U.S. 250 (1922) (five years).

Section 4-105(e) is an effective means of maintaining accurate records reflecting the status of motor vehicles within the state and of ensuring their proper sale. The consequences of its violation are not so severe, nor the responsibilities of the offender so unreasonably burdensome, as to bring into question its compliance with Due Process. Petitioner can cite no case supporting a contrary position and neither the Illinois Appellate Court nor the Illinois Supreme Court has addressed the merits of his argument. Certainly no substantial issue has been raised with respect to petitioner's conviction.

CONCLUSION

For the reasons heretofore stated, respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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